



6560.50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA-HQ-OAR-2011-0417; FRL- 9780-3]

RIN 2060-AR74

**Greenhouse Gas Reporting Rule: Revision to Best Available
Monitoring Method Request Submission Deadline for Petroleum
and Natural Gas Systems Source Category**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to revise the deadline by which owners or operators of facilities subject to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule must submit requests for use of best available monitoring methods to the Administrator. This revision does not change any other requirements for owners or operators that are outlined in the best available monitoring method rule provisions.

DATES: This rule is effective on [INSERT THE DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER] without further notice, unless the EPA receives adverse comment by [INSERT THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER]. If the EPA receives adverse comment

by [INSERT THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER], the EPA will publish a timely withdrawal notice in the **Federal Register** to inform the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by docket ID No. EPA-HQ-OAR-2011-0417 by one of the following methods:

Federal eRulemaking Portal:

<http://www.regulations.gov>. Follow the online instructions for submitting comments.

E-mail: [GHG Reporting Rule Oil And Natural Gas@epa.gov](mailto:GHG_Reporting_Rule_Oil_And_Natural_Gas@epa.gov)

Fax: (202) 566-9744.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA-HQ-OAR-2011-0417, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand/Courier Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.

EPA-HQ-OAR-2011-0417. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted

by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: **Docket ID No. EPA-HQ-OAR-2011-0417**. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9263; fax number: (202) 343-2342; e-mail address:

GHGReportingRule@epa.gov. For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: <http://www.epa.gov/ghgreporting/reporters/index.html>. To submit a question, select Rule Help Center, then select Contact Us.

SUPPLEMENTARY INFORMATION:

Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. This change amends 40 CFR Part 98, § 98.234(f)(8)(i), Timing of Request, to change the deadline for submitting best available monitoring method requests for future years. The rule has required that for reporting years after 2012, a new request to use best available monitoring methods must be submitted by September 30 of the year prior to the reporting year for which use of best available monitoring methods is sought. In this action, the EPA is revising the deadline from September 30 of the prior reporting year to June 30 of the prior reporting year. This revision does not alter the substantive requirements for entities regulated by the Greenhouse Gas Reporting Rule (40 CFR Part 98, hereinafter "Part 98"), nor does it affect the final confidentiality determinations for Part 98 data that the EPA has made through rulemaking. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate notice that will serve as the proposed rule for this amendment should the EPA receive adverse comment on this direct final rule. We will not institute a second

comment period on this action. Any parties interested in commenting must do so by the comment deadline listed in the **DATES** section of this document. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal notice in the **Federal Register** to inform the public that this direct final rule will not take effect. In that case, we will address all public comments in any subsequent final rule based on the proposed rule.

Does this action apply to me?

The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). If finalized, these amended regulations could affect owners or operators of petroleum and natural gas systems. Regulated categories and entities may include those listed in Table 1 of this preamble:

Table 1. Examples of Affected Entities by Category

Source Category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers

regarding facilities likely to be affected by this action. Although Table 1 of this preamble lists the types of facilities that could potentially be affected by this action, other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98 Subpart A and 40 CFR Part 98, Subpart W. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by [INSERT THE DATE 60 DAYS AFTER THE PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER]. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise

such objection within [the period for public comment], or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Acronyms and Abbreviations

The following acronyms and abbreviations are used in this document.

CAA	Clean Air Act
CBI	confidential business information
CFR	Code of Federal Regulations
EO	Executive Order

EPA	U.S. Environmental Protection Agency
FR	Federal Register
GHG	greenhouse gas
ICR	information collection request
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
QA/QC	Quality Assurance/Quality Control
RFA	Regulatory Flexibility Act
RIA	Regulatory Impact Analysis
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement and Fairness Act
U.S.	United States
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

Organization of This Document. The information presented in this preamble is organized as follows:

I. Background of Final Rule

II. What is the Revision to 40 CFR 98.234(f)(8)(i)?

III. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act

I. Background of Final Rule

On November 30, 2010 (75 FR 74459) the EPA finalized the Petroleum and Natural Gas Systems source category, Subpart W, of the Greenhouse Gas Reporting Rule. As part of that rule, the EPA finalized detailed provisions in 40 CFR 98.234(f), allowing for owners or operators to use best available monitoring methods for specified parameters in 40 CFR 98.233 where additional time is needed to comply with the monitoring and quality assurance/quality control (QA/QC) requirements as outlined in the rule. In these cases, owners or operators are given the flexibility, upon approval, to estimate parameters for equations in 40 CFR 98.233 by using either monitoring methods currently used by the facility that do not meet the specifications of a relevant Subpart, supplier data, engineering calculations, or other company records.

Owners or operators desiring to use best available monitoring methods for reporting years 2012 and beyond are required to submit a request by September 30 of the year prior to the reporting year for which use of best available monitoring methods are being sought.

II. What is the Revision to 40 CFR 98.234(f)(8)(i)?

This direct final rule amends one provision related to best available monitoring methods required in 40 CFR 98.234(f)(8)(i). This action amends the date by which owners or operators must submit a request to use best available monitoring methods for future reporting years from September 30 to June 30 of each year prior to the reporting year for which use of best available monitoring methods is sought. This amendment does not change any other best available monitoring method requirements as outlined in 40 CFR 98.234(f).

EPA currently has authority to review and finalize best available monitoring method request determinations during the reporting year in which the use of best available monitoring methods are sought. However, making this annual deadline earlier will create a more realistic schedule for processing best available monitoring method requests and will improve EPA's ability to inform owners or operators of EPA's final determination prior to the reporting year for which such methods are sought. For example, in 2012, the EPA received more requests than anticipated, many of which were quite technical in nature. Based on a review of those requests, the EPA has determined that, additional time is needed to carefully review

requests it may receive in future years, and in cases where the EPA deems it necessary, to afford time to request further information or to clarify questions or concerns about the request. The September 30 deadline does not provide a realistic time period to sufficiently review and process the requests and notify all owners or operators of final determinations.

The EPA anticipates that this amendment will have minimal adverse impact on owners or operators requesting to use best available monitoring methods. First, the EPA believes that the amendment will provide greater certainty to reporters as they plan for the future reporting year. Further, the EPA has streamlined the submittal process itself, thus reducing the burden with submitting best available monitoring method requests to the EPA. EPA has developed a web form in the electronic greenhouse gas reporting tool (eGGRT) that allows submitters to enter information according to rule requirements. After an initial request has been submitted, eGGRT stores the information in that request and the owner or operator can use the stored information as the basis for a new request in subsequent reporting years.

Finally, some owners or operators might be concerned that they will have to submit a best available monitoring

method request earlier in the year and that unforeseen circumstances could arise later on in the year. Because it will be the fourth year of implementation of Subpart W of the GHGRP, the EPA expects such a scenario to be highly unlikely. However, should such a scenario arise, the Agency does have authority to review a request received after the deadline. Thus, in cases of uncertainty, if the reporter anticipates the potential need for best available monitoring methods and the situation is unresolved at the time of the deadline, under 40 CFR 98.234(f)(1) owners or operators may elect to submit written notice of the potential situation by the June 30 deadline through the eGGRT system.

As noted previously, the EPA anticipates that this amendment would result in greater certainty to reporters choosing to submit best available monitoring method requests to the EPA for use in future years.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review

under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This amendment affects a provision in the rule related to the date of submission for best available monitoring method requests and does not affect what is submitted in those request or any associated burden with submitting those requests. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 98, Subpart W (75 FR 74458), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0651. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of

small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impacts of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that the rule will not

have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. EPA anticipates that this amendment would result in greater certainty to reporters choosing to submit best available monitoring method requests to the EPA for use in future years.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or

the private sector in any one year. Thus, the amendments in this action are not subject to the requirements of section 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This action applies to an optional provision in the final rule for Subpart W, which in turn applies to petroleum and natural gas facilities that emit greenhouse gases. Few, if any, State or local government facilities would be affected. This action also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Further, this action would not result in any changes to the current requirements of 40 CFR part 98 Subpart W and only applies to optional provisions in 40 CFR part 98 Subpart W. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rule for Subpart W promulgated on November 30, 2010. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.E and VIII.F of the preamble to the 2009 final rule and Section IV.F of the preamble to the 2010 final rule for Subpart W (75 FR 74485).

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it

does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address
Environmental Justice in Minority Populations and Low-
Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a

rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and the required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective on [INSERT THE DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER] without further notice, unless the EPA receives adverse comment by [INSERT THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER]. If the EPA receives adverse comment by [INSERT THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER], the EPA will publish a timely withdrawal notice in the **Federal Register** to inform the public that this rule will not take effect.

List of Subjects in 40 CFR Part 98

Environmental Protection, Administrative practice and procedures, Air pollution control, Greenhouse gases, Monitoring, Reporting and recordkeeping requirements.

Dated: February 6, 2013

Lisa P. Jackson,
Administrator.

For the reasons discussed in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98-Mandatory Greenhouse Gas Reporting

1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart-W [Amended]

2. Section 98.234 is amended by revising paragraph (f)(8)(i) to read as follows:

§98.234 Monitoring and QA/QC requirements.

* * * * *

(f) * * *

(8) * * *

(i) Timing of request. EPA does not anticipate a need for best available monitoring methods beyond 2011, but for all reporting years after 2011, best available monitoring methods will be considered for unique or unusual circumstances which include data collection methods that do not meet safety regulations, technical infeasibility, or counter to other local, State, or Federal regulations. For use of best available monitoring methods in 2012, an initial notice of intent to request best available monitoring methods must be submitted by December 31, 2011.

Any notice of intent submitted prior to [INSERT THE DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER] cannot be used to meet this December 31, 2011 deadline; a new notice of intent must be signed and submitted by the designated representative. In addition to the initial notification of intent, owners or operators must also submit an extension request containing the information specified in paragraph (f)(8)(ii) of this section by March 30, 2012. Any best available monitoring methods request submitted prior to [INSERT THE DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DIRECT FINAL RULE IN THE FEDERAL REGISTER] cannot be used to meet the March 30, 2012 deadline; a new best available monitoring methods request must be signed and submitted by the designated representative. Owners or operators that submit both a timely notice of intent and extension request consistent with paragraph (f)(8)(ii) of this section can automatically use best available monitoring method through June 30, 2012, for the specific parameters identified in their notification of intent and best available monitoring methods request regardless of whether the best available monitoring methods request is ultimately approved. Owners or operators that submit a notice of intent but do not follow up with a best available monitoring methods request

by March 30, 2012 cannot use best available monitoring methods in 2012. For 2012, when an owner or operator has submitted a notice of intent and a subsequent best available monitoring method extension request, use of best available monitoring methods will be valid, upon approval by the Administrator, until the date indicated in the approval or until December 31, 2012, whichever is earlier. For reporting years after 2012, a new request to use best available monitoring methods must be submitted by June 30th of the year prior to the reporting year for which use of best available monitoring methods is sought.

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